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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 DAVE THOMAS, as Guardian ad Litem
12 on behalf of JONATHAN THOMAS,
13 Plaintiff,
14 v.
15 COUNTY OF SAN DIEGO, et al.,
16 Defendants.

Case No.: 3:15-cv-02232-L-AGS

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
CONNIE MAGANA'S MOTION [Doc.
60] TO DISMISS**

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18 Pending before the Court is Defendant Connie Magana's ("Magana") motion to
19 dismiss. Pursuant to Civil Local Rule 7.1(d)(1), the Court decides the matter on the
20 papers submitted and without oral argument. For the foregoing reasons, the Court
21 **GRANTS IN PART and DENIES IN PART** Magana's motion.

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1 **I. BACKGROUND**

2 This litigation arises from a young man named Jonathan Thomas (“Thomas”)
3 attempting suicide by jumping off an upper tier of an inmate housing unit. Thomas has
4 suffered from a variety of mental disorders throughout his life. He has been diagnosed
5 with epilepsy, mania, depression, and schizophrenia. Because of his disorders, Thomas
6 has experienced hallucinations and delusions daily and has attempted suicide on multiple
7 occasions. Such troubles led Thomas’ father (“Plaintiff”)¹ to conclude that Thomas
8 required the constant observation of mental health professionals. Dave therefore checked
9 Thomas into a home that provided twenty-four-hour monitoring and therapy.

10 A few months after admission, Thomas attempted to set a small couch on fire
11 inside of the psychiatric home. He was subsequently arrested for arson of an inhabited
12 structure and sent to pretrial detention. While in detention, Thomas attempted suicide
13 twice by jumping off the second tier of his housing unit. Shortly after the second suicide
14 attempt, Thomas pled guilty to arson of an inhabited structure and received a sentence of
15 three years. Two years into his sentence, Thomas was transferred to Atascadero State
16 Hospital (“ASH”), because the authorities found that he represented a substantial danger
17 of physical harm to himself and others. Thomas’ commitment to this mental institution
18 has been involuntarily extended for a period of one year on three occasions.

19 In October of 2014, Thomas was transferred to San Diego Central Jail (the “Jail”)
20 to await a routine court hearing before the San Diego Superior Court. Upon learning that
21 his son had been transferred to the Jail, Plaintiff called the San Diego County Office of
22 the Public Defender. Plaintiff spoke with defendant Magana who, though never counsel
23 to Thomas, was a supervising public defender. Plaintiff told Magana that “[Thomas] had
24 jumped twice from a top tier cell in the past and that if [Thomas] was housed on a top tier
25 again, he would jump.” (FAC [Doc. 38] ¶ 11.) Magana responded by saying that

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28 ¹ Thomas’ father is suing as guardian ad litem on his son’s behalf.

1 “[Thomas] is in a place where that can’t happen” and then hung up. (Id.) Shortly after
2 Magana hung up, Plaintiff’s friend Joanne Bailey called Magana and repeated the
3 warning about Thomas’ history of jumping off upper tiers. Magana responded by stating
4 “those things just don’t happen there. I will inform the proper personnel.” (Id. ¶ 12.)
5 Despite this assurance, Plaintiff alleges, based on a review of Jail records, that Magana
6 did not adequately relay these warnings to Jail staff. (Id. 31.) Jail staff decided to house
7 Thomas in PSU Mainline, an upper tier of a housing area comparable in supervision
8 levels to general population. Thomas again jumped from the upper tier, sustaining
9 substantial injuries.

10 On October 6, 2015, Plaintiff filed a complaint on behalf of his son against the
11 County of San Diego, Dr. Alfred Joshua—the San Diego Chief Medical Officer for the
12 Sheriff’s Detention Services, and William D. Gore—the Sheriff of San Diego County.
13 The Complaint alleged claims under 42 U.S.C. § 1983 for cruel and unusual punishment
14 against all Defendants and negligence against Defendants Alfred Joshua and William D.
15 Gore. (See Compl.) Plaintiff subsequently moved for leave to file an amended complaint
16 adding Jail employed nurses Larry Deguzman, Mary Montelibano, and Marylene Allen;
17 doctors Rick Leigh Malaguti and Jorge Naranjo; Deputy David Guzman; and Magana.
18 The Court granted this motion and Plaintiff has filed the First Amended Complaint.
19 (FAC [Doc. 38].) Magana now move to dismiss the First Amended Complaint as to her.
20 (MTD [Doc. 60].) Plaintiff opposes. (Opp’n [Doc. 63].)

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22 **II. LEGAL STANDARD**

23 The court must dismiss a cause of action for failure to state a claim upon which
24 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)
25 tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 F.2d 578,
26 581 (9th Cir. 1983). The court must assume the truth of all factual allegations and
27 “construe them in the light most favorable to [the nonmoving party].” *Gompper v. VISX*,

1 *Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri v. Fed. Home Loan Bank of*

2 Seattle, 83 F.2d 1575, 1580 (9th Cir. 1996).

3 As the Supreme Court explained, “[w]hile a complaint attacked by a Rule 12(b)(6)

4 motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to

5 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and

6 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”

7 *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007) (internal citations and

8 quotation marks omitted). Instead, the allegations in the complaint “must be enough to

9 raise a right to relief above the speculative level.” *Id.* at 1965. A complaint may be

10 dismissed as a matter of law either for lack of a cognizable legal theory or for insufficient

11 facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,

12 534 (9th Cir. 1984).

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14 **III. DISCUSSION**

15 The First Amended Complaint names Magana on the first and fifth causes of action

16 only. The first cause of action alleges deliberate indifference to a serious medical need in

17 violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §

18 1983. The fifth cause of action alleges negligence.

19 **A. 42 U.S.C. § 1983**

20 Magana contends she cannot be liable under 42 U.S.C. § 1983 because she was not

21 acting under color of state law. As a general matter, a public defender is not acting under

22 color of state law when undertaking the traditional role as counsel to a criminal

23 defendant. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). The rationale behind this

24 standard is the fact that, when serving an individual client as counsel, a public defender is

25 postured as an adversary to state action. *Id.* at 322 n.13. However, a public defender can

26 be liable for certain administrative actions unrelated to the representation of a specific

27 client. *Miranda v. Clark Cnty of Nevada*, 319 F.3d 465 (9th Cir. 2003). Thus, in

28 *Miranda*, the Ninth Circuit held that the administrative head of a public defender’s office

1 was acting under color of state law when he instituted a policy of polygraphing all
2 criminal defendants and devoting less resources to defendants whose results suggested
3 they were guilty of the charged crime. *Miranda*, 319 F. 3d at 469. In so holding, the
4 Ninth Circuit emphasized that this type of a macro-level decision amounted to
5 policymaking action. *Id.* at 469–70.

6 Here, by contrast, Magana’s actions of agreeing to contact Jail personnel but
7 allegedly failing to properly execute do not amount to policymaking action. Magana was
8 not performing an administrative task unrelated to the legal representation of any specific
9 client. Rather, her action involved an undertaking to help protect one specific client from
10 state action. Thus, like the associate public defender in *Miranda*, she was not acting
11 under color of state law and is therefore not properly named as a Defendant under 42
12 U.S.C. § 1983. The Court **GRANTS** Magana’s motion to dismiss as to the first cause of
13 action.

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15 **B. Negligence**

16 To sustain a negligence claim, a plaintiff must show (1) a duty of care owed to
17 plaintiff; (2) defendant’s breach of that duty; (3) proximate cause between the breach and
18 (4) plaintiff’s injury. *Mendoza v. City of Los Angeles*, 66 Cal. App. 4th 1333, 1339
19 (1998). Magana argues that Plaintiff has failed to allege the duty of care or proximate
20 cause elements.

21 As to the duty of care element, Plaintiff concedes that Magana did not owe a duty
22 of care prior to representing that she would notify the appropriate personnel of Thomas’
23 proclivity for attempting suicide by jumping from the upper tier. (Opp’n 16.) However,
24 under the good Samaritan doctrine, one who had no initial duty to come to another’s aid
25 can assume such a duty if (1) they undertake to provide aid and (2), in so doing, induce
26 another to rely on such undertaking to their detriment. *Williams v. State of California*, 34
27 Cal. 3d 18, 23 (1983).

1 Here, the first element of the good Samaritan doctrine is clearly met as Magana
2 stated “I will inform the proper personnel.” Construing all allegations in favor of
3 Plaintiff, the Court finds the second element met too. From the fact that (1) Plaintiff and
4 Joanne Bailey quit calling Magana only after she represented she would convey their
5 warning and (2) Plaintiff did not subsequently contact the Jail, it appears that Plaintiff in
6 fact relied on Magana’s undertaking to pass the warning along to the proper personnel.
7 Furthermore, Plaintiff alleges that, had Magana properly followed through, Thomas
8 would not have been able to again attempt suicide by jumping as he would have been
9 housed in a safer situation.

10 Magana also argues that, even if she breached a duty owed to Plaintiff, such breach
11 was not a proximate cause of Thomas’ decision to jump. This argument consists only of
12 assertions that it was not reasonably foreseeable that Thomas would attempt suicide by
13 jumping and Magana did not have direct control over Thomas’ housing assignment.
14 These arguments are unpersuasive. In light of Plaintiff’s explicit warnings that Thomas
15 would jump if housed on an upper tier and a history including two such jumps, the Court
16 simply cannot hold, as a matter of law, that it was not reasonably foreseeable that
17 Thomas would do exactly that if given the opportunity. And though it appears true that
18 Magana lacked direct control over Thomas’ housing assignment, Plaintiff has alleged that
19 the Jail would have housed Thomas in a safer situation had Magana properly conveyed
20 Thomas’ warnings. Accordingly, the Court **DENIES** Magana’s motion to dismiss as to
21 the fifth cause of action.

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IV. CONCLUSION & ORDER

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Magana's motion to dismiss as follows:

- The first cause of action is dismissed as to Magana.
 - The fifth cause of action may proceed against Magana.

IT IS SO ORDERED.

Dated: September 19, 2017

M. James Lorenz
Hon. M. James Lorenz
United States District Judge